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Administration of Justice Memorandum

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1993 Legislation Affecting Criminal Law and Procedure

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This *Administration of Justice Memorandum* summarizes acts of the 1993 session of the North Carolina General Assembly that affect criminal law and procedure, except for the acts concerning structured sentencing and offense classification; both of these were discussed in a recent *Memorandum* by Stevens H. Clarke. Each new law is referred to by the session laws chapter number of the ratified act and by the number of the original bill that became law—for example, Chapter 274 (H 214). The effective date of each new law is also given. If the act specified the codification of a new section of the General Statutes (G.S.), the section number stated in the act is given, though the reader should be aware that the codifier of statutes may change that number.

The statutory changes are not reproduced here. Anyone may obtain a free copy of any bill by writing the Printed Bills Office; State Legislative Building; 16 West Jones Street; Raleigh, NC 27601-1096 or by calling that office at (919) 733-5648. A request should specify the bill number rather than the chapter number.

Some of the material in this *Memorandum* was excerpted from chapters by Institute of Government faculty members in a forthcoming publication, *North Carolina Legislation 1993*, which may be ordered from the Institute of Government publications office at (919) 966-4119 or 966-4120. The section on juvenile law changes in this *Memorandum* was excerpted from a chapter by Institute of Government faculty member Janet Mason.

Criminal Law Changes

Spousal exception to rape and sexual offense prosecutions is deleted. Chapter 274 (H 214), effective July 5, 1993, amended G.S. 14-27.8 to allow a person to be prosecuted for rape and sexual offense against his or her spouse. Before the enactment of Chapter 274, such a prosecution was allowed only if the spouses were living separately and apart when the offense was committed.

Handguns for minors are restricted. Chapter 259 (S 793), effective for offenses committed on or after September 1, 1993, placed restrictions on a minor's possession of a handgun and on selling or giving a handgun to a minor. New G.S. 14-269.7 provides that a minor (a person under eighteen years old) who possesses a handgun (defined as any dangerous firearm, including a pistol or revolver, designed to be fired by using a single hand) is guilty of a misdemeanor punishable by a maximum imprisonment of six months and a maximum fine of $500. The statute does not apply to the following:

1. A minor who possesses a handgun for educational or recreational purposes while the minor is supervised by an adult who is present
2. A minor who possesses a handgun while hunting or trapping outside the limits of an incorporated municipality if he or she possesses written permission from a parent, guardian, or other person standing in loco parentis

3. An emancipated minor (one who is married or has been emancipated by court order) who possesses a handgun in his or her own residence
4. Members of the United States armed forces when discharging their official duties or acting under orders requiring them to carry handguns

The chapter amended G.S. 14-269.1 to provide for confiscation of the handgun of a person convicted of this new offense.

The chapter also amended G.S. 14-315, which prohibits selling or giving various weapons to minors. The amendment (1) adds to the prohibited weapons a handgun as defined in G.S. 14-269.7; (2) deletes the requirement that the state must prove that the weapon was sold or given to a minor "knowingly"; and (3) provides as a defense to a prosecution that at the time of a sale evidence reasonably indicated that the minor was the required age or at the time of sale the minor produced a driver's license or other specified identification card bearing a physical description of the person named on the identification card that reasonably described the minor and that showed his or her age to be the required age for purchase.

Punishment is increased for possessing weapons on educational property. Chapter 558 (H 1008), effective for offenses committed on or after December 1, 1993, significantly revised the statute (G.S. 14-269.2) prohibiting the possession of certain weapons on public and private educational property. Such property includes any public or private school building or bus, public or private campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education, school, college, or university board of trustees, or directors for the administration of any public or private educational institution. Under Chapter 558, a person commits a Class I felony if the person possesses on educational property a gun, rifle, pistol, or other firearm; dynamite cartridge; bomb; grenade; mine; or powerful explosive as defined in G.S. 14-284.1 (this offense does not apply to a BB gun, air rifle, or air pistol). It is also a Class I felony to aid a person under eighteen years old to commit this offense. Chapter 558 provides further, however, that it is a misdemeanor (punishable by a maximum two years' imprisonment and a fine) rather than a Class I felony if a person possesses a gun, rifle, pistol, or other firearm and (1) the person is not a student (*student* is defined to include a person who had been suspended or expelled within the last five years) attending school there, (2) the firearm is not concealed, (3) the firearm is not loaded and is in a locked container, locked vehicle, or locked firearm rack that is on a motor vehicle, and (4) the person does not brandish, exhibit, or display the firearm in a careless, angry, or threatening manner.

A person commits a misdemeanor, punishable by a maximum two years' imprisonment and a fine, if the person possesses on public or private educational property a BB gun, air rifle, air pistol, bowie knife, dirk, dagger, slungshot, leaded cane, switchblade knife, blackjack, metallic knuckles, razor and razor blades (except solely for personal shaving), and any sharp-pointed or edged instrument except instructional supplies, unaltered nail files and clips, and tools used solely for preparing food, for instruction, and for maintenance. It is also a misdemeanor to aid a person under eighteen years old to commit this offense.

The statute does not apply to military and law-enforcement personnel, home schools as defined in G.S. 115C-563(a), and weapons used solely for educational or school-sanctioned ceremonial purposes or used in school-approved, adult-supervised programs.

Firearms must be stored to protect minors. Chapter 558 (H 1008), effective for offenses committed on or after December 1, 1993, added new G.S. 14-315.1 to apply to a person who resides in the same premises as a minor (a person under eighteen years old who is not emancipated—that is, not married or emancipated by court order). Such a person commits a misdemeanor, punishable by a maximum two years' imprisonment and a fine, if he or she owns or possesses a firearm and stores or leaves it in a condition that it can be discharged and in a manner that the person knew or should have known that an unsupervised minor would be able to gain access to it without the lawful permission of the minor's parents or person having charge of the minor, and the minor (1) possesses it in violation of G.S. 14-269.2(b) (felony possession on educational property); (2) exhibits it in a public place in a careless, angry, or threatening manner; (3) causes personal injury or death when it is not used in self defense; or (4) uses it to commit a crime. This offense is not committed if the minor obtained the firearm as a result of an unlawful entry by any person.

Chapter 558 also added new G.S. 14-315.2, which requires a seller or transferor to provide a written copy of G.S. 14-315.1 to the purchaser or transferee when there is a retail commercial sale or transfer of any firearm. It also requires a retail or wholesale store that sells firearms to conspicuously post a specified sign that warns that it is unlawful to leave a firearm where it is accessible to a minor. A violation of this statute is a misdemeanor punishable by a maximum of two years' imprisonment and a fine.

Amount of tear gas for self-defense is increased. Chapter 151 (S 971), effective July 1, 1993, amended G.S. 14-401.6(a)(7) to increase the amount of tear gas that private citizens (excluding convicted felons) may possess for self-defense; the capacity of a tear-gas device or container may not exceed 150 cubic centimeters, and the capacity of a tear-gas cartridge or shell may not exceed 50

cubic centimeters. Prior law provided that the capacity of a tear-gas cartridge, shell, device, or container could not exceed 50 cubic centimeters.

Assault on a sports official is made a two-year misdemeanor. Chapter 286 (S 30), effective for offenses committed on or after December 1, 1993, amended G.S. 14-33(b) to increase the punishment from a maximum thirty days' to a maximum two years' imprisonment when an assault is committed against a sports official when the official is discharging or attempting to discharge official duties at a sports event, or immediately after the sports event at which the sports official discharged official duties. A *sports official* is a person at a sports event who enforces the rules of the event. A *sports event* is broadly defined to include any organized athletic activity—professional, school interscholastic or intramural, or private.

Teaching technique to commit ethnic-intimidation offense is made a misdemeanor. G.S. 14-401.14 provides that a person who, because of another person's race, color, religion, nationality, or country of origin, assaults that person, damages or defaces his or her property, or threatens to do such an act, is guilty of a misdemeanor punishable by a maximum two years' imprisonment and a fine. Chapter 332 (S 970), effective for offenses committed on or after October 1, 1993, amended this statute to create a new offense with the same punishment when a person assembles with one or more people to teach any technique for committing any act in violation of the offense described in the preceding sentence.

Obstructing health-care facilities is made a criminal offense. Chapter 412 (S 873), effective for offenses committed on or after October 1, 1993, established new offenses designed to protect a person's access to health-care facilities. It added new G.S. 14-277.4 to prohibit a person from obstructing or blocking another person's access to or egress from a health-care facility (or from the common areas of the real property on which the facility is located) in a manner that deprives or delays a person from obtaining or providing health-care services at the facility. It also prohibits a person from injuring or attempting or threatening to injure another person who is or has been (1) obtaining health-care services, (2) lawfully aiding another to obtain health-care services, or (3) providing health-care services. A violation of any of these provisions is a misdemeanor punishable by a maximum six months' imprisonment and a fine (more severe punishment is provided for second and third convictions). *Health care facility* is a hospital, clinic, or other facility that is licensed to administer medical treatment or whose primary function is to provide medical treatment. The new law provides that a person is not prohibited from engaging in free speech or in picketing that does not impede or deny another person's access to health-care services or a health-care facility or interfere with delivery of services within a facility. Chapter 412 also amended G.S. 14-277.2(a)—which prohibits the willful or intentional possession of any dangerous weapon by a person who is participating in or is present as a spectator at any parade, funeral procession, picket line, or demonstration at any public place owned or under the control of the state or local government—to include such prohibited conduct when it occurs at any private health-care facility.

Amount of spirituous liquor and fortified wine that may be possessed or purchased is increased. Chapter 508 (S 790), effective July 1, 1993, amended G.S. 18B-301(b), -303(a), -304(b) and other sections to increase from five to eight liters the amount of spirituous liquor or fortified wine that may be purchased or possessed without a permit. The maximum amount that may be purchased with a purchase-transportation permit remains at forty liters.

Cash prizes for raffles are increased. Chapter 219 (H 97), effective June 28, 1993, amended G.S. 14-309.15(d) to increase from $1,000 to $5,000 the maximum cash prize that may be paid for a raffle. The chapter also provided that, for purposes of the act, government entities in the state are considered nonprofit as defined in G.S. 105-130.11(a).

Sale and use of certain fireworks are permitted. The sale and use of fireworks have long been generally prohibited, with some exceptions such as at public celebrations. Chapter 437 (H 1089), effective December 1, 1993, amended G.S. 14-414 to allow the sale and use of specified snakes and glowworms, smoke devices, trick noisemakers, wire sparklers, and other sparkling devices.

Placing antifreeze in public place is prohibited when not in closed container. Chapter 143 (H 1020), effective for offenses committed on or after December 1, 1993, amended G.S. 14-401 to prohibit placing any antifreeze containing ethyl glycol, when not in a closed container, in any public place or open field, woods, or yard (but the statute does not apply to the accidental release of antifreeze). A violation of this statute is a misdemeanor punishable by a maximum two years' imprisonment and a fine.

Permit required to purchase crossbow. Chapter 287 (S 628), effective for offenses committed on or after December 1, 1993, amended G.S. 14-402 and -409.1 to require a person to obtain a permit from the appropriate public official (the sheriff in some counties and the clerk of superior court in others) before purchasing a crossbow.

Exposure of breast during breast-feeding is not a violation of indecent-exposure law. G.S. 14-190.9 provides that a person commits a misdemeanor if he or she exposes his or her private parts in a public place and in the presence of a person of the opposite sex. The North Carolina Court of Appeals ruled in State v. Jones, 7 N.C. App. 166 (1970), that female breasts are not private parts and therefore their exposure is not a violation of the statute. Chapter 301

(H 1143), effective July 7, 1993, amended the statute to make clear that exposure of a mother's breast nipple during breast-feeding is not a violation. It also amended G.S. 14-190.13(6) to exclude such exposure from the definition of sexually explicit nudity.

Changes made to list of controlled substances. Chapter 319 (H 630), effective July 9, 1993, made several changes to the schedules of controlled substances. The hallucinogen 2,5-dimethyoxy-4-ethylamphetamine and the stimulant cathinone were added to Schedule I. Thebaine-derived butorphanol was excluded from Schedule II. The depressant glutethimide was transferred from Schedule III to Schedule II.

Exceptions to law about illegal slot machines are redefined. Several statutes prohibit the use of various kinds of slot machines and other devices, with some exceptions that permit their use. Chapter 366 (H 877), effective for offenses committed on or after December 1, 1993, rewrote the exceptions: Legally permitted are pinball machines, video games, and other mechanical devices that involve the use of skill or dexterity to make varying scores or tallies and that in actual operation limit to eight the number of accumulated credits or replays that may be played at one time and that may award free replays or paper coupons that may be exchanged for prizes or merchandise with a value not exceeding $10.00. The coupons may not be exchanged for or converted to money. Chapter 366 also amended G.S. 14-309, which is the punishment provision for violations of various slot-machine statutes in G.S. 14-304 through -308, to provide that the maximum punishment is two years' imprisonment and a fine (under prior law, the maximum punishment was two years' imprisonment or a fine, but not both).

Criminal Procedure and Miscellaneous Changes

Judge may permit jurors to take notes. Chapter 498 (H 115), effective for trials begun on or after October 1, 1993, amended G.S. 15A-1228 to permit jurors to take notes during a trial and to take notes into the jury room during their deliberations, unless the trial judge directs otherwise. Prior law permitted jurors to take notes but, on objection by the prosecutor or defense counsel, they were prohibited from doing so.

Video and audio equipment is permitted in conducting arraignment, first appearance, and pretrial-release hearing in noncapital cases. Chapter 30 (S 221), effective April 22, 1993, amended G.S. 15A-532 (setting pretrial-release conditions), 15A-601 (first appearance), and 15A-941 (arraignment) to authorize the use in noncapital cases of two-way audio and video transmissions in proceedings covered by each amended statute. The following conditions apply: (1) the parties must be able to see and to hear one another; (2) if represented by counsel, the defendant must be allowed to communicate fully and confidentially with counsel during the proceedings; and (3) in a pretrial-release hearing, the two-way audio and video transmission may not be used if the defendant objects (however, the defendant may not prevent its use for arraignment or first appearance). Before audio and video transmission of these proceedings may be used, a description of the procedures and type of equipment to be used must be submitted by the senior regular resident superior court judge of the particular district for approval by the Administrative Office of the Courts.

Notification of possible extension of probation period must be provided to probationer. G.S. 15A-1342(c) permits a judge, with consent of the probationer, to extend the period of probation beyond five years under certain circumstances. Chapter 84 (H 696), effective for people placed on probation on or after March 1, 1994, requires that the probation judgment form provided to a probationer must state that probation may be extended under this statutory provision.

Restitution for worthless-check conviction is expanded. Chapter 374 (S 535), effective for checks written on or after December 1, 1993, amended G.S. 7A-180, 7A-273, and 14-107 to provide that in addition to the amount of the check, restitution includes any service charges the bank imposed on the payee (the person to whom the check was written) for processing the dishonored check and any processing fee imposed by the payee under G.S. 25-3-512. The bank fees will vary from bank to bank. The payee is not entitled to charge a processing fee under G.S. 25-3-512 unless when the check was presented, a sign not smaller than eight by eleven inches and stating the amount of the fee (up to $20.00) for returned checks was conspicuously posted in the immediate vicinity of the cash register in plain view of anyone paying for goods with a check. Chapter 374 also amended G.S. 6-21, which provides civil remedies for a check returned for insufficient funds, to provide that the amount owed for the check includes bank service charges and any processing fee.

DNA database and databank. DNA (deoxyribonucleic acid) is located in the nucleus of cells, provides an individual's personal genetic blueprint, and encodes genetic information that is the basis of human heredity and forensic identification. Biological evidence is often left by a criminal perpetrator or is recovered from the crime scene. Analysis of that evidence and comparison with the DNA of known individuals help to identify, to detect, or to exclude suspects as perpetrators of particular crimes. Such analysis and comparison may also be used in identifying remains at mass disasters and in identifying missing people. Chapter 401 (H 1050), effective December 1, 1993, added new Article 13 to General Statutes Chapter 15A to create a state DNA database

and databank to be administered by the State Bureau of Investigation (SBI) within the Department of Justice. The SBI will maintain the database and provide DNA records to the Federal Bureau of Investigation (FBI) for its nationwide system that stores and exchanges DNA records submitted by state and local forensic laboratories.

Beginning July 1, 1994, a person who is convicted of specified crimes (for example: murder, rape, sexual offense, felonious assault, robbery, indecent liberties, stalking, first-degree arson) will have a blood sample taken for DNA analysis. If a person is imprisoned, the sample will be taken at the prison unit; if the person is not imprisoned, the sentencing judge will specify the prison or jail unit where the sample will be taken. Also, people who have been convicted and imprisoned for one of these crimes before July 1, 1994, will have a blood sample taken before they are paroled or released from prison.

The DNA profiles in the state database will be made available to local, state, and federal law-enforcement agencies, to approved crime laboratories that serve these agencies, and to local district attorneys' offices in furtherance of investigations of criminal offenses. The records may be made available to other appropriate parties (for example, defense attorneys), but only with a court order signed by a superior court judge after a hearing has been conducted. With limited other exceptions (such as disseminating population databases to specified agencies and parties), all DNA profiles and samples submitted to the SBI will be treated as confidential.

Public records law is clarified concerning records of criminal investigations and criminal intelligence information. Chapter 461 (S 860), effective October 1, 1993, added new G.S. 132-1.4 to clarify the public records law concerning law-enforcement agency records of criminal investigations and criminal intelligence information. It provides that these records (defined in the law) are not public records, except for six specified kinds of information discussed below. It also allows a "court of competent jurisdiction" (presumably, this means a district or superior court judge) to release information that is not a public record, although the law does not set out criteria by which a judge is to make this determination.

The six kinds of information that are public records are as follows:

1. The time, date, location, and nature of a violation or apparent violation of the law reported to a public law-enforcement agency.
2. The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.
3. The circumstances surrounding an arrest, including the time and place of the arrest; whether the arrest involved resistance, possession or use of weapons, or pursuit; and a description of any items seized in connection with the arrest.
4. The contents of 911 and other emergency telephone calls received by or on behalf of law-enforcement agencies, except when the contents reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness (law-enforcement agencies are not required to maintain tape recordings of 911 or other communications for more than thirty days from the time of the call, unless a court orders a portion sealed).
5. The contents of communications between or among employees of public law-enforcement agencies that are broadcast over the public airways.
6. The name, sex, age, and address of a complaining witness (the alleged victim or other person who reports a crime or infraction to a law-enforcement agency). The law requires a law-enforcement agency to withhold temporarily the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the witness's mental or physical health or personal safety or if release of the information will materially compromise a continuing or future criminal investigation or criminal-intelligence operation. The information must be released when the circumstances that justified withholding it cease to exist.

If a law-enforcement agency believes that the release of information in categories (1) through (5) above will jeopardize the state's ability to prosecute or the defendant's right to a fair trial, or will undermine an ongoing or future investigation, it may obtain a court order to prevent disclosure of the information.

The law provides that the following documents are public records and may be withheld only when sealed by court order: arrest and search warrants when they have been returned by law-enforcement officers after execution or attempted execution; indictments; criminal summons; and nontestimonial identification orders.

Criminal-record checks of certain employees may be conducted by Department of Justice. Two new laws authorized the Department of Justice to conduct criminal-record checks of certain employees and others. Chapter 350 (H 554), effective October 1, 1993, amended G.S. 114-19.2 to allow a criminal-record check to be done on behalf of schools within the Department of Human Resources on (1) an employee or (2) an applicant for employment or for vol-

unteer work, if the employee or applicant consents to the record check. Chapter 403 (S 549), effective July 19, 1993, adds new G.S. 114-19.3 to allow a criminal-record check to be done on behalf of a hospital or nursing home licensed under Chapter 131E of the General Statutes or on behalf of a hospital or area mental health, developmental disabilities, and substance abuse authority licensed under Chapter 122C of the General Statutes (including a contract agency) on an employee or applicant for employment, if the employee or applicant consents to the record check.

Court may order communicable disease testing of defendant charged with sex offenses. Chapter 489 (S 799), effective for offenses occurring on or after October 1, 1993, added new G.S. 15A-615 to provide that after a finding of probable cause for an offense involving nonconsensual vaginal, anal, or oral intercourse or vaginal, anal, or oral intercourse with a child less than twelve years old, the victim or the parent, guardian, or guardian ad litem of a minor victim may request that the defendant be tested for (1) chlamydia; (2) gonorrhea; (3) hepatitis B; (4) HIV; and (5) syphilis. Once the request is made, the district attorney must petition the court (presumably the court in which the case is pending) for an order requiring the defendant to be tested. If the court finds probable cause to believe that the alleged sexual contact involved in the offense would pose a significant risk of transmission of a sexually transmitted infection listed above, the court must order the defendant to submit to testing. If the defendant is in the custody of the Department of Correction, the testing will be done by the department. Otherwise, the testing will be done by the local health department. The local health director must ensure that the victim is informed of the test results and counseled appropriately. The agency conducting the tests must inform the defendant of the results and counsel appropriately. The test results are not admissible as evidence in a criminal proceeding.

Defense attorney must have access to Police Information Network when representing person charged with an infraction. Chapter 39 (H 141), effective May 4, 1993, amended G.S. 114-10.1(c) to provide that the rules governing access to the Police Information Network may not preclude an attorney representing a defendant charged with an infraction from obtaining the defendant's driving record or criminal history.

Prison "cap" is raised. Chapter 91 (S 982) amended G.S. 148-4.1 to raise the prison "cap" (limit on prison population) from 20,900 to 21,200 on June 1, 1993; to 21,400 on December 1, 1993; and to 21,500 on April 1, 1994.

Drug-education school fee is increased. Chapter 395 (H 499), effective for fees due and payable on or after August 1, 1993, amended G.S. 90-96.01(a) to increase from $100 to $150 the fee for attending drug-education school, which is sometimes required as a condition of probation.

Restitution study to be made by sentencing commission. Chapter 535 (H 1035) directed the Sentencing and Policy Advisory Commission to study the restitution policy in the criminal justice system and report its findings and recommended legislation to the 1994 legislative session.

Income withholding is required in non-IV-D child-support cases. Chapter 517 (H 538) amended G.S. 110-136.3 and -136.5 to require that all civil and criminal support orders entered in non-IV-D cases on or after January 1, 1994, must include a provision ordering immediate income withholding unless (1) one of the parties demonstrates good cause not to require withholding (*good cause* is defined to include the existence of a reasonable and workable plan for consistent and timely payments by some means other than immediate income withholding) or (2) the parties make a written agreement that provides for an alternative arrangement. Conforming amendments were made to G.S. 14-322(e), 15A-1344.1(a), 50-13.4, and 50-13.9(a).

Criminal Justice Partnership Act is enacted. Chapter 534 (H 281), effective January 1, 1994, enacted the Criminal Justice Partnership Act, which establishes a cooperative state-county program of grants for community-based correctional programs (but no money was appropriated). Chapter 534 also creates a Criminal Justice Partnership Board to advise the secretary of correction concerning community-based programs: the need for new programs, criteria for evaluation, an annual plan for grants, and standards and rules. The Department of Correction must provide technical assistance to applicants for planning and operating community-based correctional programs and enter into contracts with counties to operate such programs. Counties may not apply for funds without creating local advisory boards or joining with other counties in a multicounty board.

Duplicate copy of extradition papers is not required to be sent to Office of the Secretary of State. Chapter 83 (H 617), effective May 26, 1993, amended G.S. 15A-743(c) to delete the requirement that a duplicate copy of an application for extradition must be filed in the Office of the Secretary of State.

Motor Vehicle Law Changes

Impaired driving law is changed from 0.10 to 0.08 alcohol concentration. Chapter 285 (H 385), effective for offenses committed on or after October 1, 1993, made several significant changes in impaired driving laws:

- It reduced from 0.10 to 0.08 the alcohol concentration necessary to convict a person under G.S. 20-138.1(a)(2) (impaired driving) and G.S. 20-12.1(a)(2) (impaired instruction) and to revoke a driver's license under the ten-day civil license revocation statute [G.S.

20-16.5(b) and (b1)]. Conforming amendments were made to G.S. 20-16.2(a) (notification of rights before chemical analysis) and 20-16.2(i) (precharge or prearrest chemical analysis).

- G.S. 20-139.1(b3) (sequential breath tests) was amended to provide that a person's willful refusal to give a second or subsequent breath sample will make the result of the first breath sample (or the result of the sample providing the lowest alcohol concentration if more than one breath sample was provided) admissible in any judicial or administrative hearing for any relevant purpose, including proving that the person had a particular alcohol concentration in an impaired-driving prosecution.
- G.S. 20-13.2(d) was amended to provide that the length of a revocation under this statute for a provisional licensee (a person under eighteen years old) convicted of G.S. 20-138.3 (driving after consuming alcohol or drugs) or of an offense involving impaired driving is equal to the number of days from the date of the charge to the provisional licensee's eighteenth birthday or forty-five days, whichever is longer. The length of revocation under prior law was until the provisional licensee's eighteenth birthday or forty-five days, whichever was longer.
- G.S. 20-179(c) was amended to add as a grossly aggravating factor a conviction that occurred after the date of the offense for which the defendant is presently being sentenced, but before or contemporaneously with the present sentence. For example, a defendant commits a DWI offense on October 2, 1993, and another DWI offense on October 16, 1993. The defendant is convicted of one of these offenses on November 7, 1993. If the defendant is convicted of the other offense on November 21, 1993, then the November 7 conviction is a grossly aggravating factor at the sentencing hearing for the November 21 conviction. If both offenses are tried together and the defendant is convicted of both, then each conviction is a grossly aggravating factor in sentencing for the other. Prior law, which is retained, only included as a grossly aggravating factor a conviction that occurred within seven years before the date of the offense for which the defendant was being sentenced. The new law also makes clear that each prior conviction is a separate grossly aggravating factor and that the judge must impose Level One punishment if the judge determines that two or more grossly aggravating factors exist (if only one grossly aggravating factor exists, Level Two punishment must be imposed).
- G.S. 20-179(c) was amended to add as a grossly aggravating factor that the defendant committed the offense while driving with a child under sixteen years old in the vehicle.
- The felony death-by-vehicle statute [G.S. 20-141.4(a1)] was amended to include the commission of impaired driving in a commercial motor vehicle [G.S. 20-138.2] as an underlying offense. Prior law, which is retained, only included impaired driving [G.S. 20-138.1] as the underlying offense.
- G.S. 58-36-75 was amended to provide that there may not be a premium surcharge or assessment of points against an insured when his or her driver's license has been revoked under G.S. 20-16.5 (ten-day civil revocation) and the insured is later acquitted (or the charge is dismissed) of an offense involving impaired driving that was related to the revocation.

New court costs for twenty-day failures. Chapter 313 (S 1139), effective for reports issued on or after July 15, 1993, amended G.S. 7A-304(a) to add $50.00 to criminal court costs when a court clerk sends to the Division of Motor Vehicles a report saying that a defendant failed to appear in court for his or her motor vehicle offense trial or failed to pay a fine, a penalty, or court costs. A failure to appear or to pay results in a license revocation until the matter is resolved; this revocation is commonly known as a twenty-day failure, because the clerk sends a report after twenty days have elapsed from the defendant's failing to appear in court, to pay a fine, etc. Chapter 313 provides, however, that the court must waive the payment of the $50.00 if a defendant's failure to appear in court resulted from an error or omission of a judicial official, prosecutor, or law-enforcement officer. Chapter 313 also amended G.S. 20-24.1 to provide that a defendant who failed to appear for trial must be given a trial within a reasonable time, and to give a judge, on the defendant's motion, the authority to order a trial within a reasonable time.

Maximum speed limit for school buses is increased. Chapter 217 (S 578), effective December 1, 1993, amended G.S. 20-218(b) to increase the maximum speed limit for school buses from 35 mph to 45 mph. The maximum speed limit for school activity buses remains at 55 mph.

Selling handicapped license plate or windshield placard is made a misdemeanor. Chapter 373 (S 475), effective October 1, 1993, amended G.S. 20-37.6 to make it a misdemeanor, punishable by a maximum sixty days' imprisonment and a maximum $100 fine, to sell a handicapped license plate or windshield placard.

Miscellaneous changes. Chapter 533 (S 1074) made miscellaneous changes to motor vehicle laws, which included (1) adding a new Article 1C to General Statutes Chapter 20 to allow North Carolina to enter into a compact with other states for the purposes of exchanging reports of

traffic-law convictions (including vehicular manslaughter, impaired driving, and hit and run involving death or serious injury) and allowing officials in one member state to review the license status in other member states of an applicant for a license; and (2) amending G.S. 20-17.4 to provide that a person is disqualified from driving a commercial motor vehicle for the period during which the person's regular or commercial driver's license is revoked. These changes were effective July 24, 1993.

Juvenile Law Changes

Abuse, Neglect, and Dependency

Juvenile Code definitions are amended. The Juvenile Code definitions of *abused juvenile*, *neglected juvenile*, and other key terms dictate what must be reported under the mandatory reporting law. They also determine the scope of county social services departments' authority to investigate and intervene in cases, and the scope of a district court's jurisdiction in juvenile cases. The definitions also determine the parameters of certain criminal offenses, since it is a misdemeanor to contribute to a child's being abused or neglected, as those terms are defined in the Juvenile Code.

Chapter 516 (H 364) amended the definitions of *abused juvenile*, *caretaker*, and *dependent juvenile*, effective October 1, 1993. The changes apply to "allegations of abuse, neglect, or dependency initiating on or after that date." Chapter 324 (H 625) amended the definition of *neglected juvenile*; this change is effective December 1, 1993, and applies to adjudications for acts or omissions on or after that date.

Abused juvenile. G.S. 7A-517(1) was rewritten to do the following:

1. Refer to mistreatment of a child by a parent, guardian, custodian, or caretaker—making the language consistent with the definition of *neglected juvenile* with regard to whose behavior the definition covers
2. Define *physical abuse* to include creating or allowing serious, nonaccidental physical injury to a juvenile, while deleting the requirement that the injury cause or create a risk of death, disfigurement, impairment of physical health, or loss or impairment of the function of a bodily organ
3. Add as a form of abuse the use of cruel or grossly inappropriate procedures or devices to modify a juvenile's behavior
4. Define *emotional abuse* as creating or allowing serious emotional damage to the juvenile, deleting the requirement that the parent (or other perpetrator) also refuse to permit, provide for, or participate in treatment before emotional abuse could be found

Caretaker. G.S. 7A-517(5) was rewritten to define *caretaker* as anyone other than a parent, guardian, or custodian who has responsibility for a child's health and welfare in a residential setting, including a stepparent, foster parent, adult member of the child's household, adult relative entrusted with the child's care, or anyone such as a house parent or cottage parent having primary responsibility for supervising a juvenile's health and welfare in a residential child-care facility or residential educational facility. The definition continues to include day-care providers and others who care for a child with the approval of a day-care provider.

Dependent juvenile. G.S. 7A-517(13), as rewritten, defines *dependent juvenile* as one who needs assistance or placement because he or she has no parent, guardian, or custodian responsible for his or her care or whose parent, guardian, or custodian, due to physical or mental incapacity and the absence of an appropriate alternative child-care arrangement, is unable to provide for the child's care or supervision.

Neglected juvenile. Chapter 324 (H 625) reworded the definition of *neglected juvenile* in G.S. 7A-517(21), which includes a juvenile who is not provided necessary medical care or necessary remedial care, to delete the phrase in the former definition that referred to necessary medical care or other remedial care *recognized under state law* (Chapter 324 deleted the italicized phrase).

Mandatory reporting requirements are modified. Every person has a legal duty to report to the county social services department the case of any child that the person has cause to suspect is abused or neglected, as those terms are defined in the Juvenile Code. Effective October 1, 1993, Chapter 516 (H 364) amended G.S. 7A-543 to extend that reporting duty to cases in which there is cause to suspect that a juvenile is dependent (see the new definition, above) or that a juvenile has died as the result of maltreatment. (The act does not define *maltreatment*, a term that is not used elsewhere in the Juvenile Code and that arguably is broader than *abuse* and *neglect* as defined in the Code.) Information that must be included in a report is expanded to include the names and ages of other juveniles in the home. G.S. 7A-548 and -552 are amended to require county social services departments to report information about dependency and about child deaths due to maltreatment to the Department of Human Resources and to require the department to include that information in its central registry.

Schools must report certain offenses. The Juvenile Code requires that cases of abuse or neglect by parents, guardians, custodians, or caretakers be reported to the social services department. Because these categories are defined in ways that exclude nonresidential school officials, mistreatment of a child by a teacher or other school official is not required to be reported to social services. However, mistreatment of a child by one of these officials may have

to be reported to law-enforcement officials. Effective December 1, 1993, another law will require school officials to report specified assaults and other crimes directly to a law-enforcement agency: Chapter 327 (H 1009) added new G.S. 115C-288 to require a school principal to report immediately to the appropriate local law-enforcement agency if he or she has a reasonable belief that one of the following offenses (among others) has occurred on school property: assault resulting in serious personal injury, sexual assault, sexual offense, rape, and indecent liberties with a minor. (For a more complete description of the new law, see discussion below under Delinquency and Undisciplined Behavior.)

Professional privileges are restricted concerning duty to report and exclusion of evidence. Chapter 516 rewrote G.S. 7A-551 to make clear that, with one exception, a professional privilege is not a basis for failing to report suspected abuse, neglect, or dependency, even if knowledge or suspicion of one of those conditions is acquired in an official professional capacity. The exception is that an attorney is not required to report when the attorney acquires the knowledge or suspicion from his or her client while the attorney represents the client in an abuse, neglect, or dependency case. Otherwise, an attorney has the same duty to report as everyone else. No professional privilege, except the attorney-client privilege, may be a basis to exclude evidence of abuse, neglect, or dependency in a court proceeding—civil, criminal, or juvenile—in which a child's abuse, neglect, or dependency is in issue.

Immunity is clarified. Chapter 516 amended G.S. 7A-550 to make clear that the immunity provided by that section extends to anyone who cooperates with a county social services department in a protective services inquiry or investigation or who testifies in a court proceeding resulting from a protective services report or investigation, as well as to anyone who makes a report in good faith.

Response to reports is clarified. Chapter 516 also rewrote the provisions in G.S. 7A-544 concerning the response a county social services department must give to someone who makes a report of suspected abuse, neglect, or dependency. Within five working days after receiving a report, the social services director must give written notice to the person who made the report, stating whether the report was accepted for investigation and whether it was referred to state or local law enforcement. Within five working days after an investigation is completed, the director must give the person who made the report another written notice, stating whether there was a finding of abuse, neglect, or dependency; whether the department is taking action to protect the child; and, if so, what action it is taking. It is only after the second notice that the person who made the report has a right to ask the district attorney to review the agency's decision whether or not to provide protective services or file a petition. Under former law, no notice was required if the agency filed a juvenile court petition within five working days after receiving a report; otherwise, one notice was required, within those five working days, to the person who made the report. That person, within five days after receiving the notice, could ask the district attorney to review the agency's decision. G.S. 7A-547 was amended to give the district attorney, at the completion of such a review, the additional option of requesting the appropriate law-enforcement agency to investigate the allegations.

Protective services investigations are changed. Chapter 516 (H 364), effective October 1, 1993, rewrote G.S. 7A-544 to require a county social services director to initiate an investigation of dependency, as defined in the Juvenile Code, within seventy-two hours of receipt of a report and otherwise to respond as in cases of reported neglect. When a director receives a report of a child's death due to suspected maltreatment, he or she must determine immediately whether other children remain in the home and, if they do, investigate to determine whether they need services or whether their removal from the home is necessary for their protection. Whereas former law provided that the county social services director, in carrying out duties relating to protective services, could utilize the staff of available public or private community agencies, the statute as rewritten authorizes the director to "consult with" any public or private agencies or individuals.

Of major significance to county social services departments, the act gives the director, or the director's representative, authority to make a written demand for any information or report, even if confidential, that the director believes to be relevant to the protective services case. Unless the requested information is protected by the attorney-client privilege or its disclosure is prohibited by federal law or regulation, any public or private agency or individual must provide the director with access to and copies of the information and records. G.S. 7A-544.1(b) was amended to provide that the failure to do so is a form of obstructing or interfering with a protective services investigation, which the director can seek a court order to prohibit. The act included in G.S. 7A-544 a procedure by which a custodian of criminal investigative records can seek a court order to prevent disclosure if disclosure would jeopardize either the state's right to prosecute or a defendant' right to receive a fair trial, or if disclosure would undermine an ongoing or future investigation. All actions discussed in this paragraph must be given priority by both trial and appellate courts. A conforming amendment to G.S. 122C-54(h), in the mental health statutes, provides that a mental health facility must (formerly, may) disclose confidential information to comply with protective services laws.

Reports to law enforcement and role of law enforcement. Chapter 516 (H 364) also made several changes, effective October 1, 1993, concerning the role of law enforcement in investigations by child protective services. Language requiring law enforcement to assist with an investigation at the request of a social services director was deleted from G.S. 7A-543, but G.S. 7A-544 contains a comparable provision. G.S. 7A-548 was rewritten to require the social services director, if he or she finds evidence that a juvenile may have been abused, to make an immediate oral and a subsequent written report to the district attorney and to local law enforcement within forty-eight hours after receipt of the report. The local law-enforcement agency must immediately, but at least within forty-eight hours, initiate a criminal investigation and coordinate it with the protective services investigation being done by the social services department. When the coordinated investigation is complete, the district attorney is to determine whether criminal prosecution is appropriate and may request the social services director to appear before a magistrate. Similarly, if a director receives information that a juvenile may have been physically harmed, in violation of any criminal statute, by anyone other than a parent, guardian, custodian, or caretaker, the director must make an immediate oral and subsequent written report to the district attorney and to local law enforcement within forty-eight hours after receipt of the information. The local law-enforcement agency must immediately, but no later than forty-eight hours after receiving the information, initiate a criminal investigation, after which the district attorney determines whether criminal prosecution is appropriate.

Delinquency and Undisciplined Behavior

Probation conditions may include passing grades. Chapter 462 (S 892), effective for probation orders for adjudications of delinquency for acts committed on or after October 1, 1993, amended G.S. 7A-649(8) to allow a judge to require as conditions of a delinquent juvenile's probation that the juvenile maintain passing grades in up to four courses during each grading period and that he or she meet with the court counselor and a school representative to plan how to maintain passing grades.

Probation conditions may include notice to school officials. Chapter 369 (H 1092) amended G.S. 7A-649(8) to expand the provision that allows a judge to require as a condition of a delinquent juvenile's probation that the juvenile attend school regularly. If the offense for which the juvenile was adjudicated delinquent involved a threat to the safety of the juvenile or others and if school attendance is made a condition of probation, the judge must find whether the principal of the juvenile's school should be notified. If the judge orders that the principal be notified, the juvenile court counselor must notify the principal in writing of the nature of the offense and the probation requirements related to school attendance. This notification must be given within five days of when probation is granted or before the juvenile begins to attend school, whichever occurs first. A principal who receives this notification must handle the report according to guidelines and rules adopted by the State Board of Education. The Administrative Office of the Courts must report to the Joint Legislative Education Oversight Committee on the number of juveniles reported to principals no later than January 1, 1995. The act was effective October 1, 1993, and applies to delinquent acts committed on or after that date. The act expires October 1, 1995.

Parents' monetary liability for child's acts is increased. The Juvenile Code allows the court to order a delinquent juvenile to pay restitution. It does not provide for orders directing parents to pay restitution for harm caused by their children. It should be noted, though, that Chapter 540 (S 431) amended G.S. 1-538.1 to increase from $1,000 to $2,000 the limit of a parent's strict liability for his or her child's willful or malicious injury to person or property. Claims based on this strict liability cannot be adjudicated in juvenile court, but can be filed as actions in small claims court. The act was effective October 1, 1993, and applies to causes of action arising on or after that date.

Schools must report certain offenses. The Juvenile Code contains no reporting requirement for acts of delinquency. However, effective for acts committed on or after December 1, 1993, Chapter 327 (H 1009) added a new G.S. 115C-288 to require a school principal to report immediately to the appropriate local law-enforcement agency if he or she has a reasonable belief that an act has occurred on school property involving one of the following offenses: assault resulting in serious personal injury; sexual assault; sexual offense; rape; kidnapping; indecent liberties with a minor; assault involving the use of a weapon; or possession of a firearm, weapon, or controlled substance in violation of the law. *School property* includes any public school building, bus, public school campus, grounds, recreational area, or athletic field, in the charge of the principal. The reporting requirement applies regardless of the age of the person who may have committed the offense.

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